

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Thomas L. May,

Plaintiff,

v.

Case No. 2:19-cv-4479

Commissioner of  
Social Security,

Defendant.

ORDER

This matter is before the court for consideration of the April 29, 2020, report and recommendation of the United States magistrate judge to whom this case was referred pursuant to 28 U.S.C. §636(b). The magistrate judge concluded that the administrative law judge ("ALJ") erred in failing to consider plaintiff's mild mental health limitations in formulating plaintiff's residual functional capacity ("RFC"). The magistrate judge recommended that the Commissioner's non-disability finding be reversed, and that this case be remanded to the Commissioner and the administrative law judge pursuant to 42 U.S.C. §405(g), sentence four, for further proceedings. The magistrate judge recommended that on remand, the ALJ should explicitly discuss plaintiff's mild mental health limitations when crafting plaintiff's RFC. The magistrate judge further stated that if the resulting RFC incorporates mental restrictions, the ALJ must then determine whether plaintiff can meet the demands of his prior job or the other jobs in the national economy, despite his mental and physical limitations.

The report and recommendation specifically advised the parties that failure to object to the report and recommendation within

fourteen days of the report will result in a waiver of the right to have the district judge review the report and recommendation de novo, and also operates as a waiver of the right to appeal the decision of the district court adopting the report and recommendation. Doc. 11, p. 9. The time period for filing objections to the report and recommendation has expired, and no party has objected to the report and recommendation.

The court agrees with the report and recommendation of the magistrate judge (Doc. 11), and it is hereby adopted. The decision of the Commissioner is reversed, and this case is remanded to the Commissioner and the administrative law judge under 42 U.S.C. §405(g), sentence four, for further proceedings consistent with the report and recommendation. The clerk shall enter judgment remanding this case to the Commissioner.

Date: May 14, 2020

s/James L. Graham  
James L. Graham  
United States District Judge